

STATE OF NORTH CAROLINA COUNTY OF AVERY

The Avery County Board of Commissioners met in Regular Session on Thursday, March 5, 2009 at 3:00 p.m. in the Commissioners Board Room, Avery County Administrative Complex, Newland, NC. This meeting was previously scheduled on Monday, March 2, 2009 but was postponed due to inclement weather.

Members Present: Kenny Poteat, Chairman; Phyllis Forbes, Vice-Chairman; Scott Heath; Martha Hicks; Glenn Johnson.

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:07 p.m.

Chairman Poteat advised that anyone who would like to speak to an agenda item should sign up on the sign up sheet with the clerk in order to be recognized.

Scott Heath led in prayer.

Proclamations and Awards

The County Manager stated that Terry Whelan had been making great strides regarding the County's liability insurance and what the County can do to better their rates especially with the worker's compensation insurance. Mr. Whelan will receive an award from the NCACC at a meeting on March 13, 2009.

Public Comments

There were no public comments.

Chairman Poteat stated that he and Glenn Johnson went to Raleigh, not in the realm of the Commissioners, on Tuesday to a rally by Christian groups around the State concerning the marriage amendment in North Carolina and the implications of same-sex couples versus one man and one woman. He said there were 15 people that went down from Crossnore Baptist Church and Pineola Baptist Church. Chairman Poteat advised that he and Mr. Johnson were able to talk to Phillip Frye and Joe Sam Queen about this particular issue and other issues. Chairman Poteat stated this rally was to get the people's right to vote on this issue. Glenn Johnson added that the State of North Carolina is the only one of 15 other southern states that has not already passed this amendment and Mr. Johnson urged everyone to contact their legislators.

Phyllis Forbes entered the meeting at 3:16 p.m.

Board Appointments – Avery County Planning Board

The County Manager stated that the Avery County Planning Board had three members whose terms expired February 2009. The Planning Board requests that the Board of Commissioners reappoint Rachel Deal, Cheryl Buchanan, and Joe Perry to three year terms. All of these persons are willing to continue to serve on this board.

Motion by Scott Heath and second by Phyllis Forbes to reappoint Rachel Deal, Cheryl Buchanan and Joe Perry to a three year term on the Avery County Planning Board.

Chairman Poteat stated that the Board appreciated the willingness of Avery County citizens to serve on the different boards.

Motion unanimously approved.

Construction Management Firm – Jeff Jaynes

The County Manager advised there has been a lot of dialogue between the school board attorney and the county attorney as well as Danny Clark and Jeff Jaynes and at this point there would probably need to be a joint meeting with the Board of Education and Board of Commissioners to discuss this issue further. Discussion regarding a date to meet with the Board of Education and the Board of Commissioners and the two dates considered was March 27, 2009 and March 30, 2009. Jeff Jaynes stated that it was his understanding that the Board of Education was looking at a construction management agency and also a construction management at risk. He advised that legal counsel from both the Board of Education and Board of Commissioners met to discuss each of these agencies. Mr. Jaynes said that in a "nutshell" these are basically the same services; the at-risk adds an extra layer where the firm that is contracted guarantees the maximum price on the building and contract with them solely and the at-risk firm becomes the agent. The construction management agency basically takes the layer off, previews plans, makes suggestions for cost savings and then the construction management firm is on site 24/7 to make sure everything is being done according to code. Mr. Jaynes advised that right now the best option would be the construction management agency rather than the construction management at risk because it would allow for multiprime bidding which would allow for local contractors to bid. Mr. Jaynes stated that the Board of Education feels that the construction management firm was the best way to go but after discussion with legal counsel yesterday it was decided to possibly table this issue until both boards could meet and sit down to discuss this issue. The County Manager stated that in the standard AIA contract (American Institute of Architects) every contract unless there are special terms there is a section of that contract that is called observation and inspection and what that boils down is to once a month the architect or representative will come around and look at what has been done and meet with all the subcontractors

and the general contractor for what is called a progress report. The County Manager advised about a year ago Mr. Heath had suggested that the County needed someone looking out for the counties' best interest besides the architect or the engineer. Glenn Johnson questioned how many elementary students were enrolled in Banner Elk Elementary School. Mr. Jaynes answered that in the recent past there were around 174 students and the conflict in numbers comes in when Pre-Kindergarten is added in. Mr. Jaynes stated that the core facility which includes cafeteria, library, media center, and gym is designed to hold a minimum of 250 students. Scott Heath said that what has been done in building facilities has not worked and he liked the concept of a construction management agency.

Chairman Poteat stated that a meeting would be held for a Public Hearing for Avery County Transportation on March 27, 2009 at 4:00 p.m. and possibly a joint meeting with the Board of Education.

Tax Collector Report – Mary Daniels

The total tax collection for the month of February 2009 is \$394,773.18.

Motion by Phyllis Forbes and second by Glenn Johnson to approve the Tax Collector's Report as presented.

Scott Heath questioned if the tax collection rate was behind because of the economy. Ms. Daniels answered that the tax collection rate is behind about 2% from what it was last year. She stated that 3000 past due notices would be mailed out this week. Ms. Daniels said that several large resort areas have not paid.

Motion unanimously approved.

The County Manager stated it would be appropriate for Mary Daniels to answer any questions regarding the possibility of an appointed position for the Tax Collector. He said that Avery County had been very fortunate for the past 30 years to have Mary Daniels as the Tax Collector. The County Manager advised that Ms. Daniels is the only elected Tax Collector in the state of North Carolina and that the County cannot put qualifications on an elected position and that the County could be at risk. The County Manager stated that the Tax Collector becoming an appointed position needed to be done at this time.

Tax Assessor's Report – Phillip Barrier

Real and Personal Releases

The Real and Personal Releases for February 2009 are County Tax \$255.08; Fire Tax \$27.54; and Late-List Penalty \$5.49; total \$282.62. Majority of these were re-billed to the correct owner.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Real and Personal Releases for the month of February 2009 as presented. Motion unanimously approved.

Real and Personal Refunds

The Real and Personal Refunds for February 2009 are County Tax Refund \$26.04; Fire Tax Refund \$2.82 and Late-List Penalty \$0.40; total \$29.26.

Motion by Glenn Johnson and second by Martha Hicks to approve the Real and Personal Refunds for February 2009 as presented.

Motion unanimously approved.

Motor Vehicle Releases

The Motor Vehicle Releases for February 2009 are County Tax Release \$138.85; Fire Tax \$15.03 and Banner Elk City Tax Release \$67.22; total \$221.10

Motion by Phyllis Forbes and second by Martha Hicks to approve the Motor Vehicle Releases for the month of February 2009 as presented. Motion unanimously approved.

Phillip Barrier, Tax Assessor, reported that applications were being taken for the Board of Equalization and Review until March 20, 2009. The first meeting for the Board of E&R will be April 27, 2009. Mr. Barrier stated that he had looked into the general statute governing the resolution for the Board of E&R and this did not need to come before the Board every year only if the Resolution was amended. The sales statistics for February were discussed.

Records Retention Schedule – Sheriff Kevin Frye

Sheriff Kevin Frye explained that the Records Retention Schedule was a state recommendation for how long that documents need to be retained. Sheriff Frye stated that he had taken training through the Sheriff's Association and that this document goes into detail about any record that the Sheriff's office could possibly ever have and how long to retain these records. The County Manager stated that this was only a recommendation and that this needed to be scrutinized. Sheriff Frye advised that he would like to see this signed by the Board of Commissioners for the liability aspects.

Motion by Martha Hicks and second by Scott Heath to allow the Chairman of the Board of Commissioners to sign the Records Retention and Disposition Schedule for the Avery County Sheriff's Office. Motion unanimously approved.

Vehicle Request – Sheriff Kevin Frye

Sheriff Frye stated that he understood the outlook on revenue at this point and having that in mind the Sheriff’s Department was looking at replacing 3 or 4 vehicles. He said that Dodge Durango was going to quit making the police Dodge Durango in 2010 and the Ford Explorer was \$3,000 to \$4,000 more expensive than the Dodge Durango and that purchasing a Dodge Durango now would save the county money in the long run. Sheriff Frye advised that this would be in place of one of the vehicles that he is asking for in the 2009/2010 budget. Scott Heath stated that as far as the budget goes he was against any mid year amendments especially last minute budget amendments and that the Board needed to hold the line on the budgets throughout the whole year. Sheriff Frye said he was trying to save the County money and that this was not a dire situation but an opportunity. Scott Heath stated he didn’t know of any other elected official who goes “to bat” for his department as much as Sheriff Frye. Glenn Johnson advised that he was very reluctant to amend budgets and that budgets needed to be stuck to 99.9% of the time. Chairman Poteat said that the Board was going to have a very important retreat on Monday, March 9th and the big topic will be the budget . Chairman Poteat advised that he felt no action should be taken today and that if this request was honored it would be a vehicle replacement in the upcoming budget.

Avery Fire Association Service Report – Junior Sluder

Junior Sluder, President of the Avery Fire Association, presented the Board with a service report of the 11 Fire departments in Avery County and the training hours that have been accomplished. Mr. Sluder stated that the Fire Association through the Fire Commission would be asking for full time employees in all fire departments and that this could save the County money. Daryl Smith advised that there are estimated 3300 homes in the Green Valley Fire District and the fire rating dropping from 9 to 7 had saved the citizens in the Green Valley Fire District approximately \$214,000. Glenn Johnson stated that he appreciated all that the volunteer fire departments and their volunteer firemen do.

Ambulance Service- Fall Creek Fire Department

Tony Hunter, Fall Creek Fire Department Fire Chief, reported that there were two stations in the Fall Creek District now. Mr. Hunter stated that the citizens at the lower end of the Fall Creek District wanted the quickest response time from an emergency medical service. He said that there was a call where a four wheeler overturned and it was 42 minutes before EMS arrived on the scene and there also was an “echo” call which is one of the worst calls and it was 30 minutes before EMS arrived on the scene. Mr. Hunter stated that basically the citizens below Beech Mountain Elementary School wanted Watauga EMS to respond to the urgent medical calls like “charlie, delta and echo”. Chairman Poteat questioned if this area was not under the contract with Watauga EMS. Jerry Turbyfill, director of Avery County Emergency Medical Services, said that this would be an addition to the contract. Mr. Turbyfill stated there were inaccuracies in the data that was given to the Board. Mr. Turbyfill advised that he drove the route and it was 10.1 miles from the Banner Elk station to the Beech Mountain Elementary School and that he arrived in 18 minutes. He said that he could not support this request because he felt it was not in the best interest of the citizens. Chairman Poteat stated that the Board was concerned about this issue and wanted to make sure the response time to this area was as fast as possible. Chairman Poteat questioned if this area beyond Beech Mountain School was covered by Avery County EMS. Jerry Turbyfill answered that this was covered by Avery County EMS. He also stated that there was a contract for certain areas of Avery County with Watauga County but this area was not included in that contract and that any time Watauga County run a call Avery County paid \$500.00 to Watauga County and in return Watauga County paid approximately \$50,000 to Avery County for covering Ski Beech. The County Manager stated that there was a big difference in going from the substation in Banner Elk to Beech Mountain School and going from Watauga Hospital to Beech Mountain School. He also stated that he had complete faith in Avery EMS in responding as quickly as possible and that this issue needed more research. Chairman Poteat advised that the County Manager and the Chairman would pursue this issue further.

Public Hearing – Avery County Subdivision Ordinance

Motion by Scott Heath and second by Phyllis Forbes to go out of Regular Session and enter into a time of Public Hearing regarding changes proposed by the Avery County Planning Board to the Subdivision Ordinance. Motion unanimously approved.

Chairman Poteat asked if any Planning Board member was present. There were no planning board members present. Loretta Smith and Tommy Burleson were present from the Avery County Inspections Department.

Chairman Poteat read aloud a letter from the Avery County Planning Board. The Planning Board recommended the following changes to the Avery County Subdivision Ordinance:

Change Section 501 (2) to read

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| From: | The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved. |
| To: | The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved; provided, however, land that is subdivided into exempt parcels greater than 10 acres shall not be further divided into lots less than 10 acres until all subdivision requirements of this Ordinance (including Article IV) are met. |

Chairman Poteat stated that this is a Public Hearing and there would not be a vote taken during the Public Hearing. He advised that the Board would listen to all public comments.

Tommy Burleson reported that the change to the Subdivision Ordinance would close the loophole that allows 10 acre tracts to be subdivided and not meet the Subdivision Ordinance. Chairman Poteat questioned if a portion of land is given to a person's children would this constitute a subdivision. Mr. Burleson answered that this was considered a family subdivision and would be exempt from the Subdivision Ordinance.

Junior Sluder with the Avery County Fire Association stated he thought that Hawk's Crossing was going to be discussed. Mr. Sluder questioned how that the County got to this point and why if Hawk's Crossing presented documents to the Planning Board and then came out with something totally different than what was presented to the Planning Board. Tommy Burleson stated that the developers from Hawk's Crossing brought plats to the Planning Board in 10 acre parcels and these met all of the stipulations and then Hawk's Crossing was able to divide these 10 acre parcels further and this is what the Planning Board is asking to be changed in the Subdivision Ordinance. Junior Sluder said he wanted to know why that Hawk's Crossing had gotten this far from two years ago instead of something being done at that point. Mr. Sluder stated there had been two or three of the developments that had gotten through the loophole in Avery County. He also stated that he felt that it was a good idea that the Commissioners visit the developments before they are approved. This development could actually be taken out of a fire district, stated Mr. Sluder. The County Attorney advised that Hawk's Crossing let their application for the Subdivision lapse and then used the Special Subdivision provision to allow them to divide their lots which they were entitled to do under the Subdivision Ordinance as it is now.

Jim Brooks, Fire Chief for Beech Mountain, advised that recently he had the opportunity to look at some subdivisions and that he was appalled. Mr. Brooks stated that he talked with Richard Strickland with Department of Insurance and told him about the problems with the subdivisions and the State also in addition to the statutes that protect people's lives have state fire codes. He said that if property is put into the 10 acre tracts and after the third house is built the roads must be brought into subdivision standards or no more houses can be built. Mr. Brooks stated that Richard Strickland advised that he would take the developments that are not in compliance out of the rated fire districts and this would raise a red flag in the insurance company which would be the same as no fire protection at all.

Loretta Smith, Ordinance Administrator, stated that there were inspection reports that show that this shouldn't have happened and this went on for a year and the developers were told to get an engineer back on the site at Hawk's Crossing.

Tommy Burleson, Inspections Director, advised that he did not have the ability to do a stop work order. Mr. Burleson stated that he needed the ability to do a stop work order and the Board and the Planning Board needed to work on that issue along with the Fire Association. Mr. Burleson advised that if the property at Hawk's Crossing was divided any further or three houses built that the road standards under Article IV would have to be met.

Kenny McFee, Chief of Green Valley commented that he felt violated with the whole situation with the laws that have been overlooked. Mr. McFee stated that as a fire chief the firemen have enough to worry about without worrying about regulations. He added that there were three major concerns at Hawk's Crossing; the road grade of 34%, the bridge has to have a weight limit, and there is one stretch of road that goes around sheer rock and if that rock shifts there would be no road there.

Chairman Poteat explained that there was a concern with Hawk's Crossing and it came before the Board of Commissioners to grant a variance and the Board did not grant a variance and it was seen by the developers of Hawk's Crossing that there was another legal method to develop their land under the Subdivision Ordinance.

Tommy Burleson stated that over a year ago he had asked the developers to have an engineer come back to the site.

Glenn Johnson questioned if Hawk's Crossing could divide the lots after the change to the Subdivision Ordinance was placed. The County Attorney advised that Hawk's Crossing created the estate lots (10 acres and above) in January and then those lots were subsequently conveyed to third party entities and each third party entity split each 10 acre tract to roughly 5 acres a piece. The County Attorney stated that if this change was passed with the Subdivision Ordinance this would prevent Hawk's Crossing from dividing the 5 acre lots further. Scott Heath asked if any subdivisions would be "grandfathered in". The County Attorney answered that this would apply to all future subdivisions of land from this point further.

Eddie Storey from the Old Beech Mountain Community commented that he believed Avery County was a "playground" for developers and real estate agents because of lack of regulations and it is time that the County wakes up and possibly have some type of zoning. He stated that the pristine mountains are now gone and anything that can be done should be done to stop the unnecessary hazardous roads in these developments. Mr. Storey added that he encouraged the Board to make the proposed changes to the Subdivision Ordinance.

Glenn Johnson said that "it sticks in my craw" that a variance was asked for from 18% to 34% and that whatever has allowed this to happen we have gotten this far and got a subdivision that is that far out of ordinance and that we need to do something to correct this situation. Martha Hicks stated that she appreciated Mr. Burleson letting the Board know that he could not issue a stop work order. Glenn Johnson asked why a stop work order could not have been

issued under the erosion control plan since the grade of the road was 34% versus 18%. Tommy Burleson answered that he asked the developers to stop grading and not to pave the site but the engineer took charge and overruled his decision. Loretta Smith advised that at a recent meeting in Raleigh she had learned that they could not do a stop work order except on the erosion and sedimentation ordinance and then the only reason a stop work order can be issued is for mud leaving the site and going on other people's property. Ms. Smith stated that she felt sprinkler systems should be required for houses built when it might be a problem for the fire departments to reach the home.

There were no further comments from the public.

Motion by Scott Heath and second by Phyllis Forbes to Close the Public Hearing and resume Regular Session at 5:53 p.m. Motion unanimously approved.

Chairman Poteat advised that he felt that this issue should be addressed today because it could be a timing issue for others that might take advantage of this situation.

Motion by Phyllis Forbes and second by Martha Hicks to change 501 (2) from “The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved” to “ The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved; provided, however, land that is subdivided into exempt parcels greater than 10 acres shall not be further divided into lots less than 10 acres until all subdivision requirements of this Ordinance (including Article IV) are met”. This would be a change in the Subdivision Ordinance.

The County Attorney stated if this was a unanimous vote this would become effective immediately.

Motion unanimously approved.

Phyllis Forbes said she felt that the stop work order issue needed to be addressed.

Recess

Chairman Poteat called a 2 minute recess.

County Manager Updates – Robert Wiseman

Avery Airport Authority

The County Manager stated that the grant was extended for the Avery Airport Authority and it may be in order to issue a letter of commitment that would bind those funds for Avery County.

Energy Exchange

The County Manager advised that he met with Chad Leatherwood and Heather Dowes about the Energy Exchange and there will be someone at the next regularly scheduled meeting to update the Board about the Energy Exchange.

Jail

The County Manager stated that plans are progressing with the new jail.

NC Division of Community Assistance

The County Manager said that he possibly had offended some of the planning board members when it was suggested that the County contact the Division of Community Assistance to look at the Subdivision Ordinance which has not been reviewed since 1993. The County Manager suggested there are obviously several issues that need to be addressed with regards to the Subdivision Ordinance and the Division of Community Assistance has been contacted and basically no plans were made yet until after the change to the Subdivision Ordinance is made. Scott Heath stated that today the Board closed a loophole in the Subdivision Ordinance and possibly this governmental agency can take a look at the Ordinance and if there are other loopholes give their recommendations. He said that a third party needed to come out and look at these issues. Ms. Forbes said she agreed with Mr. Heath about the governmental agency reviewing our ordinances and that ordinances needed to be reviewed on a regular basis. Mr. Johnson commented that there was no intent to hurt anyone's feelings but he intended to exercise his right to visit the subdivision sites before voting on final approval.

Elected/Appointed Tax Collector

The County Manager asked the Board to give him and the County Attorney the authority to draft a proposal to send to the legislation regarding changing the elected position of Avery County Tax Collector to a Commissioner appointed position. Chairman Poteat stated that Mary Daniels, the current Tax Collector, is in full support of this issue and at the end of her term it was his understanding that Ms. Daniels will be retiring which would be in approximately 4 years.

Motion by Phyllis Forbes and second by Scott Heath to seek local legislation to make Avery County Tax Collector a Commissioner appointed position as opposed to an elected position either at the end of the current Tax Collector's elected term or earlier if the necessity of a vacancy occurs. Motion unanimously approved.

Tax Exempt Loan – Frank Fire Department

Jack Isaacs, member of Frank Volunteer Fire Department, stated that the Frank Fire Department is trying to buy an adjoining piece of property at the fire department for parking. The property has a house on it and the total price would be \$67,000. The house is a 2002 mobile home and the rent from the mobile home would be used for the loan on the property. The fire department has asked the Fire Commission if the Fire Commission would let the fire department borrow money if for some reason there was not a renter at the time and then the fire department would reimburse the Fire Commission. Chairman Poteat advised that this does not obligate the County or Board of Commissioners in any way to pay back the debt.

Motion by Scott Heath and second by Martha Hicks to approve the Certificate of Clerk regarding approval of a tax exempt loan to Frank Volunteer Fire Department and further does not obligate the County of Avery or Board of Commissioners. Motion unanimously approved.

Phyllis Forbes left for another board meeting at 6:30 p.m.

County Attorney Report – Michaelle Poore

Michaelle Poore, County Attorney, stated that a clean copy of the subdivision ordinance was needed and she had spoken with the Planning Board and they thought it would be a good idea to proceed. This would require a brief public hearing at the April meeting.

Approval of Minutes

Motion by Martha Hicks and second by Scott Heath to approve the Closed Session January 5, 2009 minutes; Joint meeting with the Board of Education January 12, 2009; Special Meeting – The Fall’s at Hawk’s Crossing January 13, 2009; Special Meeting – Land Transfer Tax January 26, 2009; Regular Meeting February 2, 2009. Motion unanimous by those in attendance (4-0).

Agenda Consent Items

Agenda Consent Items adopted by Consensus of the Board.

Upcoming Meetings

There will be a Board Retreat on March 9th, 2009 at 9:30 a.m. at Mountain Glen Country Club. A Public Hearing is scheduled for March 27, 2009 at 4:00 p.m. and possibly a joint meeting with the Board of Education at that time. The next Regular Meeting will be April 6, 2009 at 3:30 p.m.

Adjourn

Motion by Glenn Johnson and second by Scott Heath to adjourn this meeting at 6:40 p.m. Motion unanimously approved with those in attendance (4-0).

**Kenny Poteat, Chairman
Avery County Board of Commissioners**

ATTEST: _____
Cindy Turbyfill, Clerk